THE HONOURABLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No. 1905 OF 2005

JUDGMENT:

(Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Appeal under Clause 15 of the Letters Patent, is filed against the order of the learned Single Judge passed in Writ Petition No.11851 of 2005, setting aside the election of the appellant herein, as member for nomination by the 2nd respondent-University to the Dental Council of India.

Necessary facts in brief are as follows:

The Dentists Act 1948, a central piece of legislation, is enacted for regulating the profession of dentistry, and, for the purpose of constituting Dental Councils. Chapter II of the said Act provides the constitution and composition of council with different categories of members, and the Central Government is empowered to constitute such Council. The dispute in this case is concerned, it relates to election of a member to the council under Section 3(d) of the Dentists Act, 1948. Section 3(d) reads as follows:

" One member from each University established by law in the States which grants a recognized dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the Court, from amongst the members of the Dental Faculty of the University or in the case of University has no Dental Faculty, from amongst the members of the Medical Faculty thereof".

The NTR University of Health Sciences, Vijayawada, had issued circular notice in letter No. 39504/A1(Acad0/Senate/2004), dated 27-5-2005 to the members of the academic Senate, along with agenda to be discussed in the senate meeting, which was to be held on 4-6-2005. On the date of meeting, an additional agenda was taken up to elect one member as representative of the University to the Dental Council of India, New Delhi. In the said Senate meeting held on 4-6-2005, appellant was declared elected on the ground, that he secured majority of votes.

The first respondent herein, filed Writ Petition, questioning the election of the appellant herein. The election was mainly questioned on the ground that the election was conducted in clandestine manner, without giving notice to any faculty member, and, even without notifying in advance in the agenda for the Senate meeting, which was held on 4-6-2005. It was also his case that the said election was conducted contrary to the directions issued by this Court in Writ Petition No.4714 of 2005.

The second respondent-University opposed the relief sought for in the Writ Petition, by filing separate counter affidavit. It was the case of the University that though election was not one of the items in the agenda circulated in advance, but the said election was conducted pursuant to the additional agenda item introduced on the date of Senate meeting held on 4-6-2005. It was their case, that as the members of the academic Senate expressed their willingness to proceed with the election, the Chairman of the academic Senate, commenced the election process and called for nominations. It is stated, in response to the same, two members, by name Dr.Swarnalatha J. Wesley, and, the appellant herein, have contested in the elections, and, in view of the majority of votes secured by the appellant herein, he was declared elected. It was stated that the elections were conducted as per the provision of Section 3(d) of the Dentists Act, 1948,and, Dental Council (Election) Regulations, 1952.

The appellant herein also filed separate counter affidavit, reiterating the stand of the

University that the elections were conducted in accordance with the Dental Council (Election) Regulations, 1952. It was his further case, that only members of the Senate of the University were eligible to contest as member, to the Dental Council of India. It was his case also, that if any one is aggrieved of the election, he/she should file application before the Central Government under Section 5 of the Dentists Act, 1948, and, seek appropriate redressal, and, in view of the said remedy, the Writ petition filed under Article 226 of the Constitution of India is not maintainable.

The learned Single Judge while referring to various provisions of the Dentists Act, 1948, relevant regulations framed there under, and, NTR University of Health Sciences Act, 1986, allowed the Writ Petition, setting aside the election of the appellant herein. The learned Single Judge, while holding that all members of the Dental Faculty of the University are eligible to contest, negatived the contention of the appellant/third respondent, that only members of the Senate are eligible to be nominated to the Dental Council of India. The learned Single Judge was of the view that the election process itself has been commenced under misconception that only members of the Senate only were eligible to contest. In view of the said defective election process, the learned Single Judge has held that the very election of the appellant, as such, is contrary to the provisions of the Dentists Act, 1948.

In this appeal, it is submitted by Sri D.V. Seetharama Murthy, the learned Counsel appearing for the appellant, that in view of the statutory remedy available under the provisions of the Dentists Act, 1948, the Writ Petition itself was not maintainable. It is the submission of the learned Counsel, that as much as the writ petitioner has effective alternative remedy, the learned Single Judge ought not to have entertained the Writ Petition at all. In support of his argument that the petition under Article 226 of the Constitution is not maintainable, in view of the availability of alternative remedy, he relied on the judgments of the Supreme Court in the cases of ***Gujarat University Vs. N.U. Rajguru***, and, ***K.K. Shrivastava Vs. Bhupendra Kumar Jain***.

On the other hand, it is submitted by Sri R. Raghunandan, the learned Counsel appearing for the first respondent, that undisputedly, the election was conducted without notifying to the members of the faculty, and, the entire process is vitiated as

the same is contrary to the provisions of the Dentists Act, 1948 and the Dental Council (Election) Regulations, 1952. It is submitted by the learned Counsel that all the members of the dental faculty are eligible to contest, but, election was not notified at all. It is further submitted that even for the senate meeting, which was held on 4-6-2005, agenda was circulated few days before, and, there was no item for conducting elections, and by introducing the additional item in the agenda on the date of meeting, elections were conducted illegally and arbitrarily. In support of his argument that the grievance can be agitated in a petition under Article 226 of the Constitution, the learned Counsel placed reliance on the judgment of the Apex Court in the case of ***K.Venkatachalam Vs. A.Swamickan***.

Further, it is submitted by Sri D.V. Nagarjuna Babu, the learned Counsel appearing for the University, that the elections were conducted on the premise that the members of the Senate only are eligible to contest. It is submitted that the said Regulation, which permits dental faculty members also to contest, but the same was not noticed.

Having regard to the above submissions of the learned Counsels for the parties, the only question required to be considered is: whether the election of the member for nomination to the Dental Council of India is conducted in accordance with the procedure as contemplated under Section 3(d) of the Dentists Act, 1948 and regulations made there under, or not. As per Section 3(d) of the Act, one member from each University established by law in the States, which grants a recognized dental qualification has to be elected by the members of the Senate of the University from amongst the members of the dental faculty of the University. For the purpose of electing members, regulations, namely, Dental Council (Election) Regulations, 1952, were framed in exercise of the powers conferred under Section 20 of the Dentists Act, 1948, to conduct elections to the members of the Dental Council of India. Chapter-V of the said Regulations provide for election to the Council of a member under Section 3(d) of the Act. The relevant Regulation No.23 of the Regulations reads as follows:

> *"23. Representative of Universities: The President shall not later than 60 days before the date of occurrence of a vacancy or*

vacancies forward a notice by registered post to the Registrar of each University concerned, requesting him to hold an election not later than the date specified in the notice."

From the provisions of the Dentists Act, 1948 and the Dental Council (Election) Regulations, 1952, it is clear, that the election by the Senate should be from the members of the Dental Faculty of the University. In this case, undisputedly, election was conducted in the academic senate meeting held on 4-6-2005. Even in the agenda notified few days earlier, there was no item for conduct of elections. But, however, on the date of meeting itself, by introducing additional item, without notifying elections to the members of the dental faculty, election process was commenced, and, in the elections, it is stated that the appellant herein was elected. But, it is not in dispute that no faculty member was notified at all of the said election, and, in that view of the matter, even looking into the undisputed facts, the very election conducted is in gross violation of the provisions of the Dentists Act, 1948, and, the Dental Council (Election) Regulations, 1952. Though it is submitted by the learned Counsel for the appellant that there is alternative remedy to question the election by raising dispute under Section 5 of the Dentists Act, 1948, but, the very section also mandates that the election under the said Chapter shall be conducted in the prescribed manner, and, where there is a dispute regarding such election, reference is provided to the Central Government for deciding the matter. When the elections were conducted without following the manner as contemplated in the very provision, the relief to the writ petitioner cannot be rejected only on the ground of availability of alternative remedy. Whether relief can be granted in a petition under Article 226 of the Constitution, or, the petitioner can be driven to avail the alternative remedy, will always depend on the facts and circumstances of each case, and, nature of dispute. In this case, in spite of earlier directions issued by this Court in Writ Petition No. 4714 of 2005, without even notifying election to the eligible faculty members, election process was taken up by introducing additional item in the agenda on the date of meeting of the academic Senate. Inasmuch as it is not in dispute that the faculty members were not notified, and, no opportunity was given for the contestants who are eligible, in accordance with the provisions of the Dental Council (Election) Regulations, 1952, the entire process is vitiated and it is contrary to the mandatory provisions of the Act. In view of the facts, which are not in dispute,

the relief could be granted to the petitioner in the writ petition as was ordered by the learned Single Judge. Even the learned Counsel appearing for the University fairly submitted that the election process was commenced under misconception that members of the Senate alone were eligible to contest, but, however, in view of the amended regulations, it is clear that members of the dental faculty are also eligible to contest for the said election. However, the remedy provided under Section 5 of the Act itself mandates that the election should be conducted in accordance with the procedure prescribed, and, on the admitted facts, if such procedure is not followed, there is no need to drive the writ petitioner to avail alternative remedy as provided under Section 5, by seeking reference to the Government for adjudication. Having regard to the facts and circumstances of the case, the ratio decided in the judgments relied on by the learned Counsel for the appellant, referred to above, cannot be made applicable to this case. In fact, the judgment relied on by the learned Counsel for the first respondent/writ petitioner referred to above support his case. As no other ground is urged, we are of the view that the learned single Judge has rightly set aside the election of the appellant, and, we are in agreement with the view of the learned single Judge. We do not find any ground to interfere with the order of the learned Single Judge.

The Writ Appeal is accordingly dismissed. No order as to costs.

(BILAL NAZKI, HACJ)

(R. SUBHASH REDDY, J)

DATED: ---November, 2005.

Msnr.